

Bhatt Murphy Solicitors

PRESS RELEASE

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Detention of an Iraqi for nearly a year whilst the Home Office considered whether he could be removed to internment in Iraq found to be unlawful

The High Court today gave judgment in HXA v Home Office, a case brought by an Iraqi who was detained for 10 months in 2005 whilst the Government sought to return him to Iraq on condition that he be held in detention. The only options available in Iraq were: detention by Iraqi forces where he was likely to be subject to torture or other abuse; or, US forces where again it was accepted that he was at risk of ill-treatment and possible transfer to Guantanamo; or, alternatively held in internment in Basra by the British Army. The judgment has established that detention for any reason other than to arrange for removal from the UK is unlawful and there is no power to detain under Immigration Act powers in order to arrange for the person's detention in the home state.

The Claimant, whose identity is protected by an anonymity order, had been detained pending deportation to Iraq on the grounds that this was "conducive to the public good". Mr Justice King has held that he was detained unlawfully throughout.

From January to June 2005, the first period of detention, the judge has ruled that no thought at all had been given by the Home Office as to how the Claimant could have been lawfully and practically removed to Iraq without a serious breach of his human rights (the right not to be tortured or unlawfully killed). [para 196]

In June 2005 when the Home Office finally considered these issues, the judge found that the Claimant's detention was no longer for the sole permitted purpose of arranging for his removal from the UK but was in fact to see if he could be transferred in to the custody of either the US forces, the Iraqis or the British Army on his arrival in Iraq. The judge found that detention for that purpose was not authorised by the law.

The evidence in the case showed that consideration had been given to sending the Claimant to American custody in Iraq but that this was not pursued due to concerns over the protection of human rights for those in US custody. A memo indicated that *"it would involve us defending the American human rights position (which the FCOs questionable) in court and could become politically embarrassing. The British authorities in Iraq have so far refused to transfer detainees from British to American custody pending the conclusion of an MOU guaranteeing humane treatment and we would need assurances from the US authorities that the Claimant would not be subject to "extraordinary rendition" to Guantanamo Bay."* [para 124]

The Ministry of Defence had already informed the Home Office that they would not co-operate with his return to their custody as it could leave them vulnerable to claims of human rights abuses [paras 127 & 128]. The judge supported the analysis of the MoD and found the proposal for removal from the United Kingdom into the custody of the British Forces in Iraq “*could never have been lawful in domestic law since it would by definition be into detention by way of internment*”[para 191]

Mark Scott of Bhatt Murphy solicitors for the Claimant commented:

“This case is an important statement limiting the powers of administrative detention and making it clear that it is not permissible to circumvent prohibitions against indefinite detention without trial in the UK by simply arranging for internment of a person in a foreign state. At a time when the new Government has ordered an inquiry into human rights abuses of detainees captured abroad and subject to rendition, this case provides further evidence of how this lack of respect for basic human rights treaties being practiced at the time infected the treatment of individuals within the UK itself.

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